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Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

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Committee against Torture

Concluding observations on the sixth and seventh periodic reports of Sweden

Addendum

Information received from Sweden on follow-up to the concluding observations*

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* The present document is being issued without formal editing.

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Fundamental legal safeguards for persons deprived of their liberty (p. 7)

The right of defence

1. In previous responses to CAT, Sweden has set out its rules concerning the right to a defence counsel.

2. A recent development is that the information on the right to a defence counsel, which is provided to someone who is reasonably suspected of an offence in conjunction with their being informed that they are suspected of said offence, has to be provided in a language the suspect understands (Section 12 of the Preliminary Investigations Ordinance [1947:948]).

3. In addition, the EU directive (2013/48/EU) on the right of access to a lawyer has been adopted. This directive is to be implemented no later than 27 November 2016. With reference to this implementation, the ministry memorandum, *Rätten till försvarare, m.m.* (Ds 2015:7), includes the following proposals:

(a) Suspects deprived of their liberty have the right to speak with their defence counsel in private from the time at which they are apprehended. Under the current legislation, this right only applies to suspects who are arrested or detained;

(b) Suspects have an unconditional right to have their public defence counsel present when being questioned during the preliminary investigation. Suspects with a private defence counsel shall also as a main rule have their counsel present when being questioned;

(c) Suspects who are held in a remand prison because they have been apprehended, arrested or detained have an unconditional right to electronic communication with their public defence counsel.

4. The memorandum has been referred for consideration, and a Government bill is planned for spring 2016.

5. Furthermore, a proposed directive concerning the right of persons deprived of their liberty to provisional legal aid is currently being negotiated within the EU. The proposed directive complements the directive on the right of access to a lawyer. The proposal contains minimum rules granting suspects or accused who are deprived of their liberty, should they so wish, an unconditional right to provisional legal aid from the time at which they have been deprived of their liberty and, under all circumstances, before they are questioned. Sweden now awaits the outcome of the negotiations.

The right to independent medical examination

6. The guidelines governing health and medical care in Sweden, both within the Swedish Prison and Probation Service and in society at large, are issued by the National Board of Health and Welfare. Responsibility for supervising the Prison and Probation Service's healthcare activities rests with the Health and Social Care Inspectorate (IVO). According to the Act on Detention (2010:611), a prisoner who needs health or medical care shall be examined by a doctor. A doctor also must be called if a prisoner so requests and it is not obvious that such an examination is not needed. A prisoner who needs health or medical care shall be treated in accordance with the instructions of a doctor. If a prisoner cannot be examined or treated suitably in the place of confinement, the public health service shall be used. If necessary, the prisoner shall be transferred to a hospital.

The right to notify a relative

7. Chapter 24, Section 21a of the Swedish Code of Judicial Procedure grants persons deprived of their liberty through measures including arrest and detention the right to notify relatives or other persons particularly close to them of the deprivation of liberty as soon as it can be done without causing detriment to the investigation. It is the officer in charge of the preliminary investigation who decides in each individual case whether the investigation could be harmed by the person deprived of their liberty contacting a relative. As with all restrictions on the opportunity to contact the outside world, the officer in charge of the preliminary investigation must outweigh the risk of harming the investigation and the gravity of the offence against the intrusion or other detriment that a restricting contact with the relative entails for the suspect.

8. In the case of young people, there is a special provision concerning the notification obligation (Section 5 of the Young Offenders (Special Provisions) Act [1964:167] [LUL]). This stipulates that if someone under the age of 18 is reasonably suspected of an offence, their legal guardian is to be immediately notified of the suspicion, provided this does not detriment the investigation and there are no other specific reasons not to do this. This provision specifies that notification is to take place as soon as there is the suspicion of an offence. The Parliamentary Ombudsman has pointed out that it is particularly important not to delay notifications concerning minors who have been deprived of their liberty (JO 1985/86, p. 152).

9. Those who are arrested or detained shall, under Section 12a of the Preliminary Investigations Ordinance (1947:948), without delay be provided with written information on their right to have a relative or other person close to them notified of the deprivation of liberty. Such information is to be provided to the person who is under arrest or detained in a language they understand, and it has to be possible to keep the written information for as long as the deprivation of liberty continues. In a legal memorandum, the Swedish Prosecution Authority has expanded on how the criminal investigation authorities are to comply with their obligation to inform (RättsPM 2014:1). This states that the officer in charge of the preliminary investigation has an overall responsibility for safeguarding the suspect's rights. Therefore, it is normally the case that the written information is provided by the police immediately after the prosecutor issues the arrest warrant.

10. The aforementioned EU directive on the right of access to a lawyer also contains provisions concerning the right to have a third party informed upon deprivation of liberty. The following proposals are presented in the prepared ministry memorandum:

(a) The right in accordance with the Swedish Code of Judicial Procedure for those who are deprived of their liberty to have a relative notified of the deprivation of liberty is only to apply to adults who are deprived of their liberty. They are to be notified without delay;

(b) The equivalent notification for those who are under the age of 18 and are deprived of their liberty is to be regulated in LUL. A notification is to be submitted immediately after the deprivation of liberty. The notification is also to contain the grounds for the deprivation of liberty.

Pre-trial detention and restrictions (p. 8 a)

The Swedish Prosecution Authority's new guidelines

11. As previously reported, the Swedish Prosecution Authority has carried out a review looking at matters such as how to reduce the use of restrictions for people in pre-trial detention. In January 2014, a working group submitted the report *Häktningstider och*

restriktioner [Pre-trial detention periods and restrictions]. The Swedish Prosecution Authority has subsequently produced *Riktlinjer gällande restriktioner och långa häktningstider* [Guidelines concerning restrictions and long periods of pre-trial detention] (RåR 2015:1) and *Föreskrifter och allmänna råd om restriktioner* [Regulations and general advice on restrictions] (ÅFS 2015:2).

12. In summary, these guidelines, in force since 5 May 2015, make it clear that in each individual case there has to be a careful assessment of whether there is a considerable risk of the suspect impeding the investigation (risk of tampering with evidence). If there is such a considerable risk of tampering with evidence, the guidelines state that the prosecutor has to examine whether this risk, in relation to the gravity of the offence and the intrusion or other detriment that the measure entails for the suspect, *in itself* justifies deprivation of liberty. Where the risk of tampering with evidence cannot independently justify deprivation of liberty, the risk of tampering with evidence is not to be invoked as grounds for detention. The guidelines also make it clear that prosecutors, when deciding whether to impose restrictions, are to take a position on the necessity of each individual restriction and for each restriction to outweigh the risk of tampering with evidence and the gravity of the offence against the intrusion or other detriment that the measure entails for the suspect. In those cases restrictions have been imposed, the guidelines also make it clear that the grounds for the restrictions are to be continuously re-examined.

13. The Swedish Prosecution Authority's regulations and general advice, in force since 24 August 2015, state in part that a decision to impose restrictions is to be registered and the grounds for each individual restriction are to be documented when the decision is made or otherwise as soon as possible. This also reasserts the fact that the prosecutor has an unconditional obligation to ensure that the person deprived of their liberty and the authority providing the place of confinement immediately receive written notifications concerning decisions to impose restrictions. To the extent this can be done without harming the investigation, the person deprived of their liberty and the defence counsel shall also be provided with the documented grounds for the restrictions. If it has not been possible for them to obtain all or parts of the documentation, they are to be provided with this as soon as possible without impediment to the investigation.

Review of the legislation and authority assignments

14. In addition to the Swedish Prosecution Authority's work within the framework of current legislation to reduce the use of restrictions, the Government considers there to be a clear need for a broad review of the issue. For this reason, in July 2015, the Government appointed an Inquiry tasked with investigating what additional action should be taken to limit remand periods and the use of restrictions and to mitigate against the isolation of persons on remand (*Färre i häkte och minskad isolering* [Fewer in pre-trial detention and less isolation], ToR 2015:80). The Inquiry has been given a broad mandate in order to ensure the issue is investigated comprehensively. The remit of the Inquiry includes considering and, if deemed appropriate, proposing:

(a) New forms of pre-trial supervision measures as an alternative to pre-trial detention;

(b) Time limits for pre-trial detention and restrictions;

(c) Measures that aim to reduce the use of restrictions; and

(d) Measures that mitigate against the isolation of those who are in pre-trial detention.

15. It is particularly important that the Inquiry finds potential improvements for children and young people who are in pre-trial detention. The Inquiry is to publish its report no later than 23 August 2016.

16. Over the course of the year, the Government has also decided to task two authorities with assignments that are of significance to the issue of pre-trial detention. The Swedish Agency for Public Management has been tasked with investigating whether and, if so, how the management of forensic examinations can be changed with the aim of helping to reduce pre-trial detention periods. This assignment includes reviewing orders placed for forensic examinations, charting the turnaround times for these examinations in preliminary investigations where the suspect is in pre-trial detention and analysing which factors influence turnaround times. A report on this assignment is to be presented by 1 February 2016.

17. Furthermore, the Swedish National Council for Crime Prevention has been tasked to conduct a survey of the situation in remand prisons. The purpose of this assignment is to learn more about the use of pre-trial detention and restrictions and about the application of measures to relieve isolation. One aspect of the assignment involves using the survey as a basis for reporting any identified barriers to humane, secure and effective remand facilities and where necessary proposing how these facilities can be improved. A report on the assignment is to be presented by 25 January 2017.

18. Finally, it is worth mentioning that the Government has already tasked the Swedish Prison and Probation Service with the implementation of a special initiative for young people over the course of the period 2013-2016. In order to find forms for measures that specifically target young people while also relieving their isolation, the Prison and Probation Service is implementing early interventions targeting young people in remand prisons. The ambition is to give the pre-trial detention period more content and for these young people to be subject to interventions that improve their circumstances once they leave correctional care.

Investigations (p. 14)

New organisation from 1 January 2015

19. On 1 January 2015, the National Police Board, the National Laboratory of Forensic Science and the 21 police authorities were reorganised to form a single national authority, the Swedish Police Authority. It was decided that the new Police Authority would also have a new organisational structure in several other respects. As regards the processing of cases concerning crimes committed by, *inter alia*, police officials, a Department of Special Investigations (SU) was established at the national level with investigation units in six locations. To make this department's independence and impartiality explicit, its head is to be appointed by the Government, it receives its own appropriation item and the Swedish Police Authority's advisory council and the regional police councils are tasked with paying particular attention to the conduct of special investigations.

What happens to a criminal complaint against a police employee?

20. A complaint against a police employee is to be received by the inspector on duty or another police officer who has been specifically assigned the task. It is very important that the officer who receives the complaint follows the rules concerning how such a complaint is to be processed. The complaint is immediately handed over to the SU, which then forwards it to a prosecutor at the Special Prosecution Office for a decision on whether to institute a preliminary investigation or take some other course of action. The prosecutor also decides which of SU's regional investigation units will investigate the case.

21. When the prosecutor decides that a preliminary investigation is to be initiated, this is implemented in accordance with the rules set out in, *inter alia*, the Swedish Code of Judicial Procedure and the Preliminary Investigations Ordinance in the same way as with other criminal investigations. A preliminary investigation may lead to the prosecutor deciding either to discontinue the preliminary investigation or to proceed with a prosecution. If, having completed the preliminary investigation, the prosecutor believes that a crime has been committed, a prosecution is instituted and the case is tried in court. In some cases, the prosecutor may instead issue a summary imposition of a fine.

22. In cases where the prosecutor concludes that no crime has been committed, but the Swedish Police Authority still believes the employee has committed misconduct in office, the case is to be submitted to the Staff Disciplinary Board of the Police, which examines matters relating to dismissal due to personal circumstances, disciplinary responsibility (warning or salary deduction), prosecution and suspension. This board also examines appeals against decisions concerning dismissal from police training. The Government Disciplinary Board for Higher Officials decides on cases involving senior police officers and certain senior civilian employees.

Supervision of police activities

23. There are a number of bodies whose task it is to monitor the authorities' compliance with the applicable legislation. The primary task of the Parliamentary Ombudsman is to safeguard individuals' interests in being treated lawfully and correctly by the authorities. For example, the Parliamentary Ombudsman exercises oversight to ensure that those delivering public services comply with laws and other statutes and otherwise fulfil their obligations. The Office of the Chancellor of Justice exercises a similar form of oversight.

24. The role of the Swedish Commission on Security and Integrity Protection is to supervise, through inspections and other investigations, matters including the law enforcement authorities' use of covert coercive measures and the police's handling of personal data. At the request of an individual, the Commission also has to check whether he or she has been subjected to covert coercive measures or whether his or her personal data has been handled by the police and, if so, whether this has taken place in accordance with the law.

25. The Swedish Police Authority also continuously reviews some of its own activities; this includes such endeavours as efforts to prevent all forms of unlawful discrimination. In addition, there is a national advisory council and seven regional police councils to supervise the Police Authority's activities.

26. A government commission of inquiry, the Police Organisation Committee, has investigated matters including the need for an independent body to scrutinise the activities of the police. The Committee's final report, which was submitted in June 2015 (SOU 2015:57), proposed that a new agency be formed for supervision of the police and the Swedish Prison and Probation Service. The Committee proposes that this supervision encompass all the activities which these authorities undertake. According to the proposal, this supervisory authority should largely decide which supervision cases are to be initiated itself and develop the methods for that supervision. However, the Committee believes that supervision should focus on conditions that are particularly intrusive to or otherwise of great significance for individuals. Acting as independent observers, staff from the supervisory authority are also to regularly accompany the transport of persons overseas that may involve coercion and that are undertaken by one of the authorities, e.g. where coercive measures are used to enforce decisions concerning refusal of entry and deportation.

27. The report is currently being processed by the Government Offices.

Hate crimes (p. 15 a)

Measures in the Swedish Police Authority's area

28. The Government prioritises measures, both inside and outside the judicial system, that aim to prevent and combat hate crimes. Hate crimes are the result of a lack of respect for the equal dignity of all people, and every crime motivated by hate is an attack on fundamental democratic values.

29. In response to a commission from the Government, the Swedish Police Authority announced in spring 2015 a more ambitious approach with respect to combating hate crimes. For example, there are to be special democracy and hate crime groups in the three metropolitan regions. Besides hate crimes, the remit of these groups is also intended to encompass other offences that threaten fundamental rights and freedoms. In addition to investigations, the designated groups are to work with victim support, internal training, outreach activities and other confidence-building measures.

30. The hate crime groups that already exist in Stockholm and Malmö are receiving additional resources, and the work of building up a new group in Gothenburg is underway. In total, the number of people working full-time with these issues will more than double, provided recruitment goes as planned. The rest of the country must also have the capacity to deal with hate crimes. The likelihood of a hate crime being investigated and cleared up should not be dependent on where in the country the crime has taken place. For this reason, all seven police regions have a designated person who is responsible for the regional implementation of measures adopted as part of the Swedish Police Authority's initiative.

31. The Swedish Police Authority intends to include more developed crime prevention activities in its hate crime initiative, mainly through a more frequent contact and dialogue with groups often exposed to hate crimes. At the national level, a consultation forum at which representatives of groups exposed to hate crime can meet representatives of the judicial authorities has been established in autumn 2015. At the local level, collaboration will take place with municipalities and associations, e.g. through local collaboration agreements and "citizen promises". The Government has made it clear that the Police Authority's initiative will be followed up in order to ensure that the measures have the intended effect.

32. Furthermore, on 1 October 2015, the Police Authority established a national cybercrime centre (SC3) in order to strengthen the capacity to investigate ICT-related crimes and secure evidence. SC3 will be built up successively until 2017, when the number of employees will be about twice as many as today.

Measures in the Swedish Prosecution Authority's area

33. There is at least one prosecutor at each of Sweden's local public prosecution offices who specialises in hate crimes. The operational plan for 2015 includes a project that aims to review how prosecutors manage preliminary investigations with a hate crime motive, based on hate crime statistics from the Swedish National Council for Crime Prevention. This review covers about 300 cases, and the results will be presented in December this year. In addition to this, the Swedish Prosecution Authority has developed new guidelines for combating hate crime. This work has recently been completed. In November, the Swedish Prosecution Authority also arranges an annual hate crimes conference at which hate crime prosecutors meet and share their experiences regarding legal issues.